

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CENTRAL FREIGHT LINES, INC., a Texas)
Corporation)

Plaintiff,)

v.)

AMAZON FULFILLMENT SERVICES,)
a Delaware corporation, and DOES 1 through)
25, inclusive,)

Defendants.)

Case No. 2:17-cv-00814

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

Confidential information may be designated "Confidential," or "Attorneys' Eyes Only."

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206.962-5040

1 “Confidential” material shall include commercial information that is not publicly known
2 and is of technical or commercial advantage to its possessor, in accordance with Fed. R. 26(c)(7),
3 or other information required by law or agreement to be kept confidential.

4 “Attorneys’ Eyes Only” material shall include information that the producing party deems
5 especially sensitive, which may include (but is not limited to) trade secrets, confidential research
6 and development, financial, technical, marketing, pricing and revenue information, and any other
7 sensitive trade secret information, the disclosure of which to in-house counsel, officers, directors,
8 and/or managers would create a substantial risk of serious harm that could not be avoided by less
9 restrictive means.

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as
12 defined above), but also (1) any information copied or extracted from confidential material; (2)
13 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
14 conversations, or presentations by parties or their counsel that might reveal confidential material.

15 However, the protections conferred by this agreement do not cover information that is in
16 the public domain or becomes part of the public domain through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
19 or produced by another party or by a non-party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
21 the categories of persons and under the conditions described in this agreement. Confidential
22 material must be stored and maintained by a receiving party at a location and in a secure manner
23 that ensures that access is limited to the persons authorized under this agreement.

24 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
25 ordered by the court or permitted in writing by the designating party, a receiving party may
26 disclose any confidential material only to:

1 (a) the receiving party's counsel of record in this action, as well as employees
2 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

3 (b) the officers, directors, and employees (including in house counsel) of the
4 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
5 agree that a particular document or material produced is for "Attorneys' Eyes Only" and is so
6 designated;

7 (c) experts and consultants to whom disclosure is reasonably necessary for
8 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
9 A);

10 (d) the court, court personnel, and court reporters and their staff;

11 (e) copy or imaging services retained by counsel to assist in the duplication
12 of confidential material, provided that counsel for the party retaining the copy or imaging service
13 instructs the service not to disclose any confidential material to third parties and to immediately
14 return all originals and copies of any confidential material;

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
17 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
18 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
19 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
20 under this agreement;

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information;

23 (h) any mediator retained by the parties or appointed by the Court in this
24 action, and his or her staff who are assisting in the conduct of the mediation, who have signed
25 the "Acknowledgement and Agreement to Be Bound" (Exhibit A).
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27

1 4.3 Disclosure of “Attorneys’ Eyes Only” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the designating party and any applicable non-
3 party, a receiving party may disclose “Attorneys’ Eyes Only” material only to:

4 (a) Persons who appear on the face of the Designated Materials as an author,
5 addressee, or recipient thereof;

6 (b) Outside Counsel;

7 (c) Experts and consultants of the Receiving Party to whom disclosure is
8 reasonably necessary for this litigation and who have signed the “Acknowledgement and
9 Agreement to Be Bound” (Exhibit A);

10 (d) The Court and its personnel;

11 (e) Any designated arbitrator or mediator who is assigned to hear this matter,
12 and his or her staff, who have signed the “Acknowledgement and Agreement to Be Bound”
13 (Exhibit A);

14 (f) Court reporters; and

15 (g) Professional vendors to which disclosure is reasonably necessary for this
16 litigation and a representative of which that has signed the “Acknowledgement and Agreement
17 to Be Bound” (Exhibit A).

18 4.4 Filing Confidential Material. Before filing confidential material or discussing or
19 referencing such material in court filings, the filing party shall confer with the designating party
20 to determine whether the designating party will remove the confidential designation, whether the
21 document can be redacted, or whether a motion to seal or stipulation and proposed order is
22 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
23 that will be applied when a party seeks permission from the court to file material under seal.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
26 or non-party that designates information or items for protection under this agreement must take
27 care to limit any such designation to specific material that qualifies under the appropriate

1 standards. To the extent it is practical to do so, the designating party must designate for protection
2 only those parts of material, documents, items, or oral or written communications that qualify,
3 so that other portions of the material, documents, items, or communications for which protection
4 is not warranted are not swept unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
6 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
7 unnecessarily encumber or delay the case development process or to impose unnecessary
8 expenses and burdens on other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated
10 for protection do not qualify for protection, the designating party must promptly notify all other
11 parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must
15 be clearly so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents
17 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), the designating party must affix the word "CONFIDENTIAL" and, if applicable,
19 "ATTORNEYS' EYES ONLY", to each page that contains confidential material. If only a
20 portion or portions of the material on a page qualifies for protection, the producing party also
21 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
22 margins).

23 (b) Testimony given in deposition or in other pretrial proceedings: the parties
24 and any participating non-parties must identify on the record, during the deposition or other
25 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
26 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
27 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the

1 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
2 confidential information at trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a prominent place
4 on the exterior of the container or containers in which the information or item is stored the word
5 "CONFIDENTIAL" and, if applicable, "ATTORNEYS' EYES ONLY". If only a portion or
6 portions of the information or item warrant protection, the producing party, to the extent
7 practicable, shall identify the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the designating party's
10 right to secure protection under this agreement for such material. Upon timely correction of a
11 designation, the receiving party must make reasonable efforts to ensure that the material is treated
12 in accordance with the provisions of this agreement.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
21 regarding confidential designations without court involvement. Any motion regarding
22 confidential designations or for a protective order must include a certification, in the motion or
23 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
24 conference with other affected parties in an effort to resolve the dispute without court action. The
25 certification must list the date, manner, and participants to the conference. A good faith effort to
26 confer requires a face-to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
2 intervention, the designating party may file and serve a motion to retain confidentiality under
3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
5 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
6 other parties) may expose the challenging party to sanctions. All parties shall continue to
7 maintain the material in question as confidential until the court rules on the challenge.

8 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
9 LITIGATION

10 If a party is served with a subpoena or a court order issued in other litigation that compels
11 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
12 “ATTORNEYS’ EYES ONLY”, that party must:

13 (a) promptly notify the designating party in writing and include a copy of the
14 subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena or order is
17 subject to this agreement. Such notification shall include a copy of this agreement; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued
19 by the designating party whose confidential material may be affected.

20 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
22 material to any person or in any circumstance not authorized under this agreement, the receiving
23 party must immediately (a) notify in writing the designating party of the unauthorized
24 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
25 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
26 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
27 Agreement to Be Bound” that is attached hereto as Exhibit A.

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1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties agree
8 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must return all confidential material to the producing party, including all copies, extracts
12 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
13 destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a
19 designating party agrees otherwise in writing or a court orders otherwise.

20
21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 DATED: December 15, 2017
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DATED: December 15, 2017

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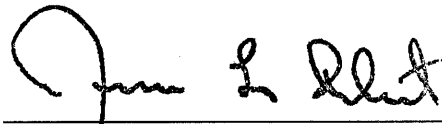
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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: December 28, 2017



Honorable James L. Robart
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Central Freight Lines, Inc. v. Amazon Fulfillment Services*, Western District of
Washington Case No. 2:17-cv-00814-JLR. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the provisions
of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America that on the 28th day of December, 2017, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification to counsel of record.

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Executed on the 15th day of December, 2017, at Seattle, Washington.

/s/Jacob M. Downs

Jacob M. Downs, WSBA No. 37982